

STATE OF MICHIGAN
COURT OF APPEALS

MICHELLE TOUKHLI,

Plaintiff-Appellant,

v

RAMZI D. TOUKHLI,

Defendant-Appellee.

UNPUBLISHED

September 30, 2004

No. 252087

Wayne Circuit Court

LC No. 94-436747-DM

Before: Cavanagh, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendant's motion for relief from judgment of divorce for lack of jurisdiction. We affirm in part and reverse in part, but uphold the actions of the trial court.

Plaintiff first argues that the trial court clearly erred in determining that she did not satisfy the statutory residency requirement necessary to establish jurisdiction. We agree in part. Whether a court has jurisdiction is a question of law. *Smith v Smith*, 218 Mich App 727, 729; 555 NW2d 271 (1996). But a challenge to whether a party meets the statutory residency requirement conferring jurisdiction is a question of fact. *Id.* at 731. This Court's review of a finding of fact is limited to clear error. *McNamara v Horner (After Remand)*, 255 Mich App 667, 669; 662 NW2d 436 (2003). A finding is clearly erroneous if, after reviewing the record, this Court is left with a definite and firm conviction that the lower court made a mistake. *Id.*

In Michigan, the circuit court's jurisdiction over divorces is strictly statutory. *Smith, supra* at 730. The Legislature granted jurisdiction to the circuit court through MCL 552.6, but limited the jurisdiction in MCL 552.9. MCL 552.9 requires the complainant or the defendant reside in this state for 180 days immediately preceding the filing of the divorce complaint and reside in the county in which the complaint is filed for ten days immediately preceding the filing of the complaint. These residency and waiting period requirements are jurisdictional. *Smith, supra*.

The trial court, after examining the material presented and hearing arguments, determined that plaintiff had in fact established residency in Pittsburgh, and thus, did not meet the statutory 180-day residency requirement of MCL 552.9(1). Substantial material supports this finding of fact. Plaintiff moved back to Michigan from Pittsburgh some time between December 2, 1994, and December 4, 1994, and she filed her divorce complaint on December 22, 1994. She contends, however, that despite her physical presence in Pittsburgh, she intended to remain a resident of Michigan. The issue of legal residency is largely one of intent. *Id.*

The record indicates that the parties moved together as husband and wife to Pittsburgh. They took marital property with them and bought furniture together for their apartment. Plaintiff admits that the couple even opened a joint checking account in Pittsburgh. There is no indication that the couple opened such bank accounts or any account in Michigan. Plaintiff claims that she only took her clothing to Pittsburgh and left other personal property in Michigan. This contention seems to be contradicted by statements made to the court before this issue arose. First, defendant claimed that he was missing a briefcase. Plaintiff stated that she had searched her property brought back from Pittsburgh and the briefcase was not with it. Second, plaintiff asked the court for a monetary property settlement because, when she moved back to Detroit, she did not bring anything with her. Given these facts, it seems that plaintiff stated that she left personal property in Pittsburgh despite the fact that she brought property back to Michigan. Plaintiff never stated that this personal property consisted only of clothing until defendant raised the jurisdiction issue.

Plaintiff also attempts to demonstrate her intent to remain a Michigan resident by mentioning the fact that she left her car in Michigan when they moved. Plaintiff did not bring up this car until after defendant raised the jurisdictional question. There is no mention of a car in the property settlement the parties articulated on the record, and defendant argues that he never knew of plaintiff owning a car. Given the facts as they appear on the record, this does not seem to be a clear indication of intent. Plaintiff also points to a tax liability incurred during the year of her marriage when she lived in Pittsburgh. But this liability does not indicate when it occurred. It is undisputed that plaintiff returned to Michigan in December 1994. The liability could stem from the time after her return. In all, plaintiff's evidence of residency in Michigan does not leave this court with a definite conviction that the trial court's conclusion, that she did not meet the residency requirements of MCL 552.9(1), was erroneous. See *McNamara, supra*. The court lacked jurisdiction to hear the case and, thus, dismissal was proper. See *Smith, supra*.

The trial court did, however, err in determining that plaintiff did not meet the 10-day residency requirement. It is undisputed plaintiff moved back to Wayne County by December 4, 1994, at the latest. She did not file her complaint until December 22, 1994. This is clearly in excess of ten days. However, the trial court's error on this issue makes no difference to the outcome of this case given the fact that plaintiff did not meet the 180-day requirement. MCL 552.9. The court properly vacated the judgment of divorce entered nunc pro tunc and dismissed the complaint for divorce given the failure to meet the 180-day requirement. *Smith, supra*.

Plaintiff next contends that despite lack of jurisdiction over the divorce, the trial court had jurisdiction over the custody and support portion of the divorce action. We disagree. This Court has specifically stated that the two parts of the action may not be separated. “If the trial court lacked jurisdiction over this case, then it lacked authority to enforce *any* action with respect to the case, including the support orders.” *Smith, supra* at 732 (emphasis original). Here, the court lacked jurisdiction because plaintiff failed to meet the mandatory 180-day residency requirement. MCL 552.9; *Smith, supra* at 730. Therefore, the court lacked jurisdiction over child custody and support issues. *Id.* at 732. Plaintiff’s contentions to the contrary are without merit.

Affirmed in part, reversed in part. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Donald S. Owens